



GEORGIA M. PESTANA
Acting Corporation Counsel

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007

Sharon Sprayregen
Tel.: (212) 356-0873
ssprayre@law.nyc.gov

June 22, 2021

VIA ECF

Hon. Vernon S. Broderick
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *Pearson., v. Cynthia Braun, et al*, 20-CV-9482

Dear Judge Broderick:

I am an Assistant Corporation Counsel in the Office of the Corporation Counsel of the City of New York, Georgia M. Pestana, attorney for Defendants Cynthia Brann, Patricia “Patsy” Yang, and Margaret Egan (collectively, “Defendants”) in the above-referenced action.

I write in relation to Plaintiffs’ motion for default judgment (dkt. nos. 19, 20, 21) and the Court’s Order, dated June 18, 2021 (dkt. no. 22), to respectfully request that the Court grant Defendants’ permission to file an Answer, attached hereto as **Exhibit A**, and *nunc pro tunc* request for an extension of time (from May 10 (Braun), May 7 (Yang) and May 28 (Egan)) to file the Answer. This is Defendants’ first request for an extension. As Plaintiff is incarcerated, I have not been able to reach him to obtain his consent to his request.

I apologize to the Court and to Plaintiff for overlooking the deadlines to respond to the Second Amended Complaint.¹ I failed to calendar the deadlines, and became aware of the motion for default judgment and the Court’s order this morning when I received the CourtAlert notification.

I respectfully submit that the delay in filing the Answer has not prejudiced Plaintiff. Plaintiff was one of a number of plaintiffs who filed lawsuits similar to that in *Lee et*

¹ I have also mailed a letter to Plaintiff apologizing for my error.

al. v. Department of Corrections, et al., 20 cv 08407, wherein the inmates alleged conditions at DOC's Vernon C. Bain Center (VCBC) have been and are unsafe due to the COVID-19 pandemic. In *Lee*, the Court severed the claims of all plaintiffs in that action, and Plaintiff is one of many lawsuits pending. See Dkt. No. 1. In other actions severed from *Lee*, the defendants have answered recently or engaged in motion practice and have yet to answer. See, e.g., *Barrow v. Brann et al*, 20-cv-09417 (ER)(SDA) (defendant's motion to dismiss filed on May 20, 2021, and plaintiff has not yet filed an opposition); *Garcia v. Brann et al*, 21-cv-01234 (ER)(KHP) (answer was recently filed and an initial case management conference was held today, June 22, 2021). Accordingly, the course of the litigation has not been significantly altered by the delayed response. Moreover, all inmates in DOC custody are now eligible to receive the COVID-19 vaccine, and DOC and Correctional Health Services continue to apply a multi-pronged approach to minimizing the transmission of COVID-19 in DOC's facilities.

Additionally, the Second Circuit has on "numerous occasions [stated] its preference that litigation disputes be resolved on the merits," *Cody v. Mello*, 59 F.3d 13, 15 (2d Cir. 1995) (collecting examples). See also *Enron Oil Corp. v. Diakuhara*, 10 F.3d 90, 96 (2d Cir. 1993) ("defaults are generally disfavored and are reserved for rare occasions"). Accordingly, I respectfully request that the Court grant Defendants' request for an extension *nunc pro tunc*, and allow this matter to be adjudicated on its merits.

Thank you for your consideration of this application, and I apologize again for the inconvenience to the Court and Plaintiff.

Respectfully,

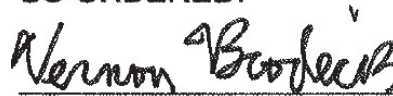
/s/

Sharon Sprayregen
Assistant Corporation Counsel

cc: Lester Pearson
NYSID: 07610168L
B&C No. 30020002033
Vernon C. Bain Center
1 Halleck St.
Bronx, NY 10474

This case concerns Plaintiff's conditions of confinement at the Vernon C. Bain Center. Plaintiff alleges that Defendants are not following proper COVID-19 screening protocols and social distancing guidelines, leaving Plaintiff in a constant state of fear. (Doc. 10.) Defendants, however, are more than a month late in responding to Plaintiff's complaint. Without condoning Defendants' conduct, given that this case is in an early stage, Defendants' request to file an answer is granted. Additionally, given that Defendants have now answered and appeared, Plaintiff's motion for default judgment, (Docs. 19, 20, 21), is now moot. The Clerk of Court is respectfully directed to mail a copy of this order to pro se Plaintiff.

SO ORDERED:


HON. VERNON S. BRODERICK 6/23/2021
UNITED STATES DISTRICT JUDGE